Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte ROGER FRANET

Appeal No. 2003-0679
Application No. 09/730,163

ON BRIEF

Before FRANKFORT, NASE, and BAHR, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 3, 6 and 7. The examiner's final rejection of claims 4 and 5 was withdrawn in the answer (p. 10). No claim has been canceled.

We REVERSE.

BACKGROUND

The appellant's invention relates to a mowing implement with at least two mowing units, at least one swath former and a mobile carrier frame (specification, p. 1). A copy of the dependent claims under appeal is set forth in the appendix to the appellant's brief. Claim 1, the only independent claim on appeal, reads as follows:

> In a mowing implement including a mobile central frame, a pair of mowing units respectively mounted to opposite sides of said central frame, and at least one swath former being associated with one of said pair of mowing units, the improvement comprising:
>
> support structure mounting said at least one swath former to said frame, exclusive of said one of said pair of mowing units, for movement between an operating position, wherein it intercepts crop delivered by said one of said pair of mowing units and directs this crop toward the other of said pair of mowing units, and a non-operating position wherein it is located so as to permit crop delivered by said one of said pair of mowing units to fall onto the ground.

The prior art of record relied upon by the examiner in rejecting the appealed claims is:

Carmichael	4,078,366	Mar. 14, 1978
Allen	4,932,197	June 12, 1990
Welsch et al. (Welsch)	6,145,289	Nov. 14, 2000
Freudendahl	EP 0 882 386 A2	Dec. 9, 1998

The appellant's admission of prior art (Admitted Prior Art) as set forth in claim 1 which is drafted as a Jepson[1] type claim in which the preamble of the claim is an admission of prior art. Note, In re Fout, 675 F.2d 297, 213 USPQ 532 (CCPA 1982).

Claims 1 and 3 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Freudendahl.

Claim 2 stands rejected under 35 U.S.C. § 103 as being unpatentable over Freudendahl in view of Carmichael.

Claim 1 stands rejected under 35 U.S.C. § 103 as being unpatentable over the Admitted Prior Art in view of Welsch.

Claims 6 and 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over the Admitted Prior Art in view of Welsch as applied to claim 1, and further in view of Allen.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer

[1] Ex parte Jepson, 1917 C.D. 62, 243 O.G. 525 (Ass't Comm'r Pat. 1917), incorporated into the rules as 37 CFR § 1.75(e).

(Paper No. 13, mailed November 5, 2002) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 12, filed August 16, 2002) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The anticipation rejection

We will not sustain the rejection of claims 1 and 3 under 35 U.S.C. § 102(b).

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert.

denied, 465 U.S. 1026 (1984), it is only necessary for the claims to "'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

Freudendahl discloses a combination of mowers for grass crops. As shown in Figure 4, the combination of mowers comprises a mower unit 2' for front mounting on a tractor 1' and two mower units 33, 34 for rear mounting on the tractor 1' arranged on either side of the tractor 1'. The rear mounted mower units 33, 34 project obliquely rearwards and have adjusting means over discharge openings 48, 49 for placing the discharged swath 24 immediately adjacent the swath 6 discharged by the front mounted mower unit 2' for combining/bunching three swaths in one operation. The rear mounted mower units 33, 34 can be swung about pivot joints 41, 42 by means of hydraulic activators 43, 44 from the illustrated operating position to a substantially vertical conveyance position. The adjusting means over discharge openings 48, 49 is shown in Figures 2 and 3 as being a pivotable flap 22 adjustable by means of a hydraulic activator 23.

Freudendahl does not anticipate independent claim 1. In that regard, Freudendahl's swath formers (i.e., the discharge openings 48, 49 with adjustable flaps) are mounted to the mowing units 33, 34 not to the mobile central frame on which the

mowing units are respectively mounted on opposite sides of the central frame. Thus, Freudendahl lacks the claimed "support structure mounting said at least one swath former to said frame, exclusive of said one of said pair of mowing units."

Since all the limitations of claim 1 are not met by Freudendahl for the reasons set forth above, the decision of the examiner to reject independent claim 1, and claim 3 dependent thereon, under 35 U.S.C. § 102(b) is reversed.

The obviousness rejection of claim 2

We will not sustain the rejection of claim 2 under 35 U.S.C. § 103 as being unpatentable over Freudendahl in view of Carmichael.

We have reviewed the reference to Carmichael additionally applied in the rejection of claim 2 (dependent on claim 1) but find nothing therein which makes up for the deficiency of Freudendahl discussed above regarding claim 1. Accordingly, the decision of the examiner to reject claim 2 under 35 U.S.C. § 103 is reversed.

The obviousness rejection of claim 1

We will not sustain the rejection of claim 1 under 35 U.S.C. § 103 as being unpatentable over the Admitted Prior Art in view of Welsch.

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

The Admitted Prior Art teaches a mowing implement including a mobile central frame, a pair of mowing units respectively mounted to opposite sides of the central frame and at least one swath former being associated with one of the pair of mowing units.

Welsch discloses a mower for harvesting crop. As shown in Figure 1, the mower includes a windrow grouper attachment (i.e., a swath former) 12. The windrow grouper attachment includes a crop conveyor 34 attached to the main frame 14 of the mower by a vertically swingable support 30 which is selectively disposable in a lowered working position where it intercepts crop exiting the mower and transfers it side ways and in a raised non-use position wherein it permits crop exiting from the mower to be deposited into a windrow directly behind the mower. The vertically swingable support 30 for the crop conveyor is mounted to a slide 26 that is in turn mounted for shifting laterally on a transverse beam 20 of the mower main frame 14. By selectively manipulating the conveyor 34 among its working, non-use and shifted positions, it is possible to deposit

three windrows alongside each other for being subsequently picked up together for processing by another machine, such as an ensilage harvester, for example.

In our view, the combined teachings of the Admitted Prior Art and Welsch would have made it obvious at the time the invention was made to a person of ordinary skill in the art to have mounted a windrow grouper attachment (i.e., a swath former) as taught by Welsch to each of the mowing units of the Admitted Prior Art. However, such a modification to the Admitted Prior Art does not result in the subject matter of claim 1. In that regard, Welsch's windrow grouper attachments (i.e., a swath formers) would be mounted to the mowing units of the Admitted Prior Art not to the mobile central frame on which the mowing units of the Admitted Prior Art are respectively mounted on opposite sides of the central frame. Thus, the mowing implement of the Admitted Prior Art as modified by the teachings of Welsch lacks the claimed "support structure mounting said at least one swath former to said frame, exclusive of said one of said pair of mowing units."

Since the combined teachings of the Admitted Prior Art and Welsch are not suggestive of the subject matter of claim 1 for the reasons set forth above, the decision of the examiner to reject claim 1 under 35 U.S.C. § 103 is reversed.

The obviousness rejection of claims 6 and 7

We will not sustain the rejection of claims 6 and 7 under 35 U.S.C. § 103 as being unpatentable over the Admitted Prior Art in view of Welsch as applied to claim 1, and further in view of Allen.

We have reviewed the reference to Allen additionally applied in the rejection of claims 6 and 7 (dependent on claim 1) but find nothing therein which makes up for the deficiency of the Admitted Prior Art and Welsch discussed above regarding claim 1. Accordingly, the decision of the examiner to reject claims 6 and 7 under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 and 3 under 35 U.S.C. § 102(b) is reversed and the decision of the examiner to reject claims 1, 2, 6 and 7 under 35 U.S.C. § 103 is reversed.

REVERSED

CHARLES E. FRANKFORT Administrative Patent Judge	)
JEFFREY V. NASE Administrative Patent Judge	) BOARD OF PATENT) APPEALS) AND) INTERFERENCES
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